

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Chops Holdings, LLC,
Appellant,

v.

Douglas County Board of Equalization,
Appellee,

Case No: 12R 1294 & 13R 467

Decision and Order Affirming the
Determination of the Douglas County Board
of Equalization

For the Appellant:

David Paladino,
Member, Chops Holdings, LLC.

For the Appellee:

Jimmie Pinkham III,
Deputy Douglas County Attorney.

These appeals were heard before Commissioners Robert W. Hotz and Nancy J. Salmon.

I. THE SUBJECT PROPERTY

The Subject Property is a residential parcel improved with a 924 square foot single family rental home located at 1807 Dorcas Street, Omaha, Douglas County, Nebraska. The legal description of the parcel and property record files for the Subject Property are found at Exhibits 268 and 269.

II. PROCEDURAL HISTORY

The Douglas County Assessor (the Assessor) determined that the assessed value of the Subject Property was \$33,800 for both tax years 2012 and 2013.¹ Chops Holdings, LLC, (the Taxpayer) protested this assessment to the Douglas County Board of Equalization (the County Board) and requested an assessed value for tax year 2012 of \$16,000,² and an assessed value of \$25,600 for tax year 2013.³ The County Board determined that the taxable value for both tax years 2012 and 2013 was \$33,800.⁴

¹ See, E108, E109.

² See, E268:32.

³ See, E269:33.

⁴ See, E108, E109.

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (the Commission). The Commission held a hearing on November 19, 2014.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.⁵ When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."⁶

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁷

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁸ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁹

A Taxpayer must introduce competent evidence of actual value of the subject property in order to successfully claim that the subject property is overvalued.¹⁰ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was arbitrary or unreasonable.¹¹

⁵ See, Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁶ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁷ *Id.*

⁸ Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

⁹ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

¹⁰ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981) (determination of equalized taxable value).

¹¹ *Bottomf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based. The commission may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹² The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹³ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹⁴

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹⁵

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹⁶ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁷ Taxable value is the percentage of actual value subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁸ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁹ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.²⁰

¹² Neb. Rev. Stat. §77-5016(8) (2014 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-5016(6) (2014 Cum. Supp.).

¹⁴ Neb. Rev. Stat. §77-5018(1) (2014 Cum. Supp.).

¹⁵ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁶ *Id.*

¹⁷ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

¹⁸ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

²⁰ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

B. Summary of the Evidence

David Paladino, member of Chops Holdings, LLC, testified that the condition rating of the Subject Property should have been changed from fair to poor based upon the comments found in the Assessment Report prepared by the Assessor following the Assessor's inspection of the Subject Property on January 18, 2011.²¹ These condition comments included that the front porch was pulling away from the home, and that other components of the Subject Property were in fair condition.²² Paladino expressed an opinion of value for the Subject Property for tax year 2012 of \$16,000, and an opinion of value of \$25,600 for tax year 2013.

C. Analysis

The Taxpayer must overcome by competent evidence a presumption in favor of the County Board.²³ Competent evidence is relevant and material evidence or that evidence "which the very nature of the thing to be proven requires."²⁴ A taxpayer must introduce competent evidence of actual value of its property in order to successfully claim that a property is overvalued.²⁵ An owner who is familiar with his property and knows its worth is permitted to testify as to its value.²⁶ Separately, the Taxpayer must meet its burden to show that the County Board's determination was arbitrary or unreasonable.²⁷ A mere difference of opinion is insufficient to meet the Taxpayer's burden.²⁸

David Paladino asserted that the Subject Property was overassessed because the improvement's condition rating should have been poor instead of fair due to a front porch that was detaching from the residence. The notes from an Assessor's inspection indicate that there

²¹ E269:6.

²² See, E269:6.

²³ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 825 N.W.2d 447 (2013).

²⁴ *Black's Law Dictionary 6th Edition*, West Group, p. 284 (1990).

²⁵ See, *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N. W. 2d 515 (1981).

²⁶ See, *U. S. Ecology v. Boyd County Bd. of Equal.*, 256 Neb. 7, 16, 588 N.W.2d 575, 581 (1999).

²⁷ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 124-25, 825 N.W.2d 447, 452 (2013).

²⁸ See, *JQH La Vista Conference Center Development LLC v. Sarpy County Board of Equalization*, 285 Neb. 120, 125-26, 825 N.W.2d 447, 452 (2013).

were components of the improvement that were in fair condition, and that the Assessor determined the condition rating of the Subject Property to be fair.²⁹

Paladino expressed an opinion of value for the Subject Property for tax year 2012 of \$16,000, and an opinion of value of \$25,600 for tax year 2013. The Commission finds that Paladino's testimony is competent evidence sufficient to rebut the presumption in favor of the County Board's determination of taxable value since he was the owner of the Subject Property who was familiar with the worth of the property.

However, the Commission finds that the Taxpayer did not produce clear and convincing evidence that Paladino's assertions established that the County Board's determination of taxable value was arbitrary or unreasonable. The evidence is characterized as two conflicting subjective opinions, one of Paladino and the other of the County Assessor, concerning the condition rating of the Subject Property. The Taxpayer did not present objective evidence sufficient to support or to quantify Paladino's opinions of value. The Commission finds that Paladino's assertions constitute a mere difference of opinion.

V. CONCLUSION

The Commission finds that there is competent evidence to rebut the presumption that the County Board faithfully performed its duties and had sufficient competent evidence to make its determinations. However, the Commission also finds that there is not clear and convincing evidence that the County Board's determinations of value were arbitrary or unreasonable.

For all of the reasons set forth above, the decision of the County Board should be affirmed.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Douglas County Board of Equalization determining the values of the Subject Property for both tax years 2012 and 2013 are affirmed.
2. The taxable value of the Subject Property for both tax years 2012 and 2013 is \$33,800.

²⁹ See, E269:6.

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Douglas County Treasurer and the Douglas County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2014 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax years 2012 and 2013.
7. This Decision and Order is effective for purposes of appeal on January 9, 2015.³⁰

Signed and Sealed: January 9, 2015

Robert W. Hotz, Commissioner

SEAL

Nancy J. Salmon, Commissioner

³⁰ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2014 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.